

FINAL STATEMENT OF REASONS AND PUBLIC REPORT
DEPARTMENT OF PESTICIDE REGULATION

Title 3. California Code of Regulations
Amend Section 6860
Pertaining to Toxic Air Contaminants

UPDATE OF THE INITIAL STATEMENT OF REASONS

As authorized by Government Code section 11346.9(d), the Department of Pesticide Regulation (DPR) incorporates by reference the Initial Statement of Reasons prepared for this rulemaking.

No changes were made to the proposed regulations nor are any changes necessary to the Initial Statement of Reasons following the 45-day public comment period.

The originally proposed regulatory action was noticed in the *California Regulatory Notice Register* on June 25, 2010. During the 45-day public comment period, DPR received comments on the proposed text. The comments are discussed under the heading “Summary and Response to Comments Received” of this Final Statement of Reasons.

DPR has amended Title 3, California Code of Regulations section 6800(a). This action designates the pesticide chemical chloropicrin as toxic air contaminant (TAC) pursuant to Food and Agricultural Code (FAC) section 14023.

PUBLIC HEARING

DPR scheduled and held a public hearing on August 10, 2010. A transcript of the hearing is contained in the rulemaking file.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED

Comments were received from the following: (1) Justin Whitaker, Sierra-Cascade Nursery; (2) JoAnn Stuke Diethrich, Stuke Nursery Company; (3) Cynthia Cory, California Farm Bureau; (4) Kelly McKechnie, Western Growers; (5) Robert Dolezal, California Association of Nurseries and Garden Centers; (6) Billy Gaither, Pest Control Operators of California.

Commenter No. 1: If chloropicrin were to land on the TAC list, it would enter DPR's mitigation phase and most certainly be subject to controls and regulations similar to those already in place on TAC-listed pesticides. We've experienced those regulations firsthand and most of them decrease our efficiency and profitability. More thought needs to be given to the effect this will ultimately have on small businesses.

Response: Pursuant to FAC section 14023(e), the need for, and appropriate degree of, control measures for a pesticide listed as a TAC pursuant to FAC section 14023(d) shall be determined by DPR in consultation with the Office of Environmental Health Hazard Assessment, the Air

Resources Board, and the air pollution control districts or air quality management districts in the affected counties. If a need for control measures is determined for chloropicrin, the proposed control measures will be promulgated in a separate regulatory action.

Commenter No. 2: Fumigation is a vital necessity for agricultural crops. Trees must be nematode free. Methyl bromide and chloropicrin is the foundation of the security of getting crops to the market.

Response: Comment not relevant to the proposed regulation.

Commenter No. 3: We have the strictest pesticide permit conditions for applications of chloropicrin and it never hurts to review its use or permit conditions, but we don't add unnecessary restrictions.

Response: See response to commenter No. 1.

Commenter No. 4: Chloropicrin is a critically important crop protection tool and used in many integrated pest management programs for a variety of crops such as berries, vegetables, tree fruits, nuts, and many others.

Response: Comment not relevant to the proposed regulation.

Commenter No. 5: Chloropicrin is an essential component of the fumigants that we require in order to avoid pathogens that otherwise would destroy strawberries that are produced or would go on to reduce the production yield of those strawberry plants. If chloropicrin were removed from the process, we would be talking dramatic reductions.

Response: The regulatory action merely adds chloropicrin to the TAC List in section 6860(a) and does not restrict or further regulate use of the chemical. Also, see response to commenter No. 1.

Commenter No. 5: The application of these soil fumigants has become progressively more controlled and more protective of both the human participants that are involved in the fumigation and by standard populations. Most of them are applied under tarp. A large number are now applied under virtually impenetrable films that further reduce the application rates that are necessary and reduce the amount of emissions that are actually released into the atmosphere.

Response: Some, but not all, county agricultural commissioners have implemented local restrictions to reduce exposure to chloropicrin. Some growers or applicators may also take voluntary measures to reduce exposures and emissions. It is possible that the local or voluntary restrictions reduce chloropicrin exposures to acceptable levels. However, DPR's risk assessment and proposed listing as a TAC are based on the minimum regulatory requirements described on labels. DPR will evaluate and consider implementing the local and voluntary restrictions on a statewide basis if and when DPR determines that control measures are needed, as specified under FAC section 14023(e).

Commenter No. 6: We represent the nonagricultural use of chloropicrin. Chloropicrin is used as a warning agent in conjunction with sulfuryl fluoride, so we maintain that this is an important use to protect the consumer.

Response: Comment not relevant to the proposed regulation.

CONSULTATION WITH OTHER AGENCIES

As described above, DPR has consulted with the Office of Environmental Health Hazard Assessment and the Air Resources Board. In addition, DPR has consulted with the California Department of Food and Agriculture during the development of the text of proposed regulations as specified in FAC section 11454.2, and the February 6, 1992, Memorandum of Agreement which was developed as provided in FAC section 11454.2.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

DPR has determined that the proposed regulatory action does not impose a mandate on local agencies or school districts requiring reimbursement by the State pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code because the regulatory action does not constitute a "new program or higher level of service of an existing program" within the meaning of section 6 of Article XIII B of the California Constitution. DPR has also determined that no nondiscretionary costs or savings to local agencies or school districts will result from this regulatory action.

ALTERNATIVES DETERMINATION

The Director has determined that no alternative considered by DPR would be more effective in carrying out the purpose for which this regulation is proposed, or would be as effective and less burdensome to affected private persons or businesses than the proposed regulatory change.

POSTING REQUIREMENT

3 CCR, section 6110, states in part that, "The public report shall be posted on the official bulletin boards of the Department, and of each commissioner's office, and in each District office of the DPR [Division of Pest Management, Environmental Protection and Worker Safety] for 45 days." DPR has posted its Initial Statement of Reasons and Public Report on its official bulletin board, which consists of the Department's Internet Home Page <<http://www.cdpr.ca.gov>>. In addition, copies were provided to the offices listed above for posting.